

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Vonage Petition for Declaratory Ruling	)	WC Docket No. 03-211
	)	
	)	

**COMMENTS OF  
THE ALLIANCE FOR PUBLIC TECHNOLOGY**

**October 27, 2003**

The Alliance for Public Technology (APT) welcomes the opportunity to comment on the questions raised by Vonage Holdings Corporation (Vonage) regarding voice over Internet protocol (VOIP) communications. APT is a nonprofit organization comprised of public interest groups and individuals that has been highlighting the need for ubiquitous deployment of advanced telecommunications services throughout our nation for more than a decade.

In this proceeding, APT believes that the Commission should take a narrow approach, and following its conclusion, engage in a comprehensive rulemaking to create a regulatory framework for VOIP. The Commission should not preempt the decision of the Minnesota Public Utilities Commission, for doing so would only create more uncertainty. The PUC is correct in its conclusion that Vonage's service is functionally equivalent to basic telephone service and thus subject to state laws regarding such services. As this service is being marketed as a local/long distance bundled voice communications plan, Minnesota has an obligation to its citizens to ensure consumer protection and public safety through the use of the minimal regulations proposed

(certification, E911 plans, and tariff filings). Until the VOIP issues are resolved by Commission action, states must be allowed to exercise their regulatory authority.

There are three important issues the FCC must address in the new world of VOIP. First, the definitive regulatory classification of the service must be established. The Minnesota PUC believes it is a telephone (or telecommunications) service and Vonage states it is an information service. This conflict is a continuation of the Commission's efforts to choose a definition for all broadband services and highlights the inherent problem of squeezing new services into old definitions. Neither telecommunications service nor information service is an appropriate classification. As APT offered in our comments in the *Wireline Broadband* proceeding, an entirely new definition and framework is needed for advanced services.

Section 706, which encourages deployment of "advanced telecommunications capability," is a logical starting place for building this new framework. Broadband and VOIP can fit under this definition and the Commission can incorporate the necessary regulations for the new services while eliminating provisions that would unnecessarily burden their development. In this framework, critical consumer protection mandates can be maintained. If Vonage is treated as an information service, as the company requests, is it no longer subject to such provisions as Section 255 accessibility requirements? Is Vonage equipment currently compatible with computers and telephones designed for use by the blind and deaf? The Commission must consider these issues when deciding the appropriate regulations for VOIP.

Secondly, the role of broadband and VOIP in the future of universal service must be determined. The current universal service mechanism is in a precarious state.

Contributions to the fund are declining due to shifts in telecommunications usage. APT believes broadband and VOIP be required to contribute to universal service. Vonage, as the provider of a service that appears to be functionally equivalent to a telephone call, should be included in the universal service contribution system. There are important issues to be resolved regarding the interstate and/or intrastate nature of Vonage's service, but the principle remains that Vonage and other VOIP service providers are involved in providing some form of communications and should contribute to universal access programs.

Related to the universal service question is the issue of intercarrier compensation. VOIP providers are not currently subject to these charges, yet they are using the capacity of the public switched network. The Commission must include this issue in its future proceeding and develop a framework for incorporating VOIP into the intercarrier compensation model, since the traditional distinction between inter- and intrastate revenues is difficult at best in VOIP.

Finally, the Minnesota PUC is right to be concerned about the provision of E911 service by Vonage. Regardless of the regulatory definition attached to the service, consumers have an expectation that when they pick up the phone and dial 911, they will be connected to their local emergency services. Vonage makes the argument that its service cannot distinguish the location of the user. That may be true, but the public interest in providing reliable 911 service outweighs the technical question. In addition, compliance with CALEA requirements must also be considered by regulators. If Vonage is providing telephone service, but is not considered a telecommunications carrier, then what are the ramifications for CALEA? The Minnesota PUC, and the Commission, must

both be clear on these points. Any VOIP provider should be obligated to provide E911 service and comply with CALEA.

The Commission should consider the potential effects of this petition very carefully and put forth a solution that protects consumers and continues to encourage the development of VOIP. In a future rulemaking the Commission can address the questions raised here about the overall regulatory structure, universal service and E911, but in the interim, APT respectfully recommends that the Commission refrain from preempting the Minnesota PUC's decision.

Respectfully submitted,

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